K

1947. File No. B. Habitual Offenders/47.

Legal DEPARTMENT

B BRANCH

Subject:— A Bill to provide for the Restriction of Habitual Offenders

Bill No. ~~XLVII~~

of 1947.

P 30/E

File No. B. Habitual Offenders/47.

Std. Sectt. Slip 24 B c.

596-D

C O N T E N T S.

Legal Department File No. D. Habitual Offenders/47

Cr. No.	Compilation No.	Subject.	Pages.
		A Bill to provide for the Restriction of Habitual Offenders.	
1.	U.O. to H.D. No.95-L dt. 25th June 1933.	Draft Bill	1-2.
2.	U.O. to H.D.No. 9793 dt. 2nd Oct. 1939.	Revised draft Bill	3-4.
3.	U.O. to H.D.No. 8449 dt. 13th March 1947.	Recasting of clause 29.	5-6.
4.	U.O. to H.D.(Mr. P.A. to H.E.(B & C) No. 93-L dt. 17th Sept. 1947.	Reservation of the Bill for the consideration of C-G.	7-8.
5.	C.L.L.D.No. 12065 dt. 20th Nov. 1947.	Reading Governor's assent	9-12.
6.	L.D.H.I.No. 24104 dt. 26th Nov. 1947.	Repugnancy of the Bill	13-14.
7.	L.D.H.I.No. 25797 dt. 29th Dec. 1947.	Governor General's assent	15-16.
8.	C.P.L.D.No. 17-L dt. 12th Sept. 1947.	Publication of the Bill.	17-28.
9.	C.P.L.D.No. 13969 dt. 22nd Dec. 1947	Publication of Act	29-42.
10.	———	Debates, Acts	43-76.

CHS
6/45

Office of the H.L.A.

The proposal is to undertake legislation on the lines of the Restriction of Habitual Offenders (Punjab) Act, 1918. The proposal has been approved and legislation has been decided upon by H.M., (H.& L.D.). The papers have not been seen by H.E. the Governor under paragraph 2(1)(p) of Secretary to the Government's Circular No.12/1, dated the 10th May 1937. The case has then to be brought before the Council of Ministers under instruction 24 of the Instructions issued by the Governor under rule 15 of the Rules of Business. The draft Bill is prepared by the H.L.A. under instruction 25, if the Council of Ministers decides in favour of the legislation.

2. The attention of H.D. is invited to the Circular of the Secretary to the Council of Ministers dated the 23rd May 1938. The reference to the H.L.A. for the drafting of the Bill therefore appears to be premature.

Sd/- J.T.Dharandhar.
Superintendent of Legal Affairs.

U.O. to H.D., No. 95-L., dated the 25th June 1938.

SMT/11.6.

Office of the P.L.A.

A tentative draft Bill on the lines of the Restriction of Habitual Offenders (Punjab) Act,1918, is appended. The draft Statement of Objects and Reasons at page 111 ante is in order.

2. The Bill does not require any sanction or recommendation under the Government of India Act, 1935.

Sd/- J.N.Dharamdhar.
Remembrancer of Legal Affairs.

U.O. to H.D. No.9793 dated the 2nd October 1939.

GHF/11.5.

Office of the R.L.A.

the draft Bill as amended is in order.

2. Clause 19 of the Bill has been recast.

3. The Bill does not require any sanction or recommendation under the Government of India Act,1935; nor does it affect any of the special responsibilities of the Governor under section 52(1) of the Government of India Act, 1935.

4. Clause 3 of the Bill proposes to empower Magistrates to ask persons against whom an order under section 110 Criminal Procedure Code could be passed to show cause why an order of restriction should not be made in lieu of or on addition to requiring bond for good behaviour. Clauses 6 and 12 also give special powers to the High Court and the Chief Presidency Magistrate while acting under sections 123 and 118 of the Code. These clauses prescribe a new procedure in dealing with habitual offenders. But sub-section (2) of section 1 of the Code of Criminal Procedure provides inter alia that in the absence of any specific provision to the contrary nothing therein shall affect any special jurisdiction or power prescribed by any other law for the time being in force. This section contemplates that the Provincial Government can prescribe special form of procedure. The proposed provisions would not therefore appear repugnant to the provisions of the Criminal Procedure Code and it would not be necessary to reserve the Bill for the consideration of the Governor-General under section 107 of the Government of India Act, 1935.

5. The Home Department will please append a suitable Statement of Objects and Reasons to the Bill.

Sd/- D.V.Vyas.

Secretary of Legal Affairs.

U.O. to H.D.No. 2443 , dated the 13th March 1947.

GMP/11.3.

Office of the P.L.A.

In continuation of this office U.R.No.9076, dated the 9th September 1947, forwarding a revised draft of the Bombay Habitual Offenders Bill, the Home Department is informed that the subject-matter of the Bill falls under entries 1,4 and 27 in the Provincial Legislative List and entries 2 and 23 in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. As the provisions of clause 23 of the Bill are repugnant to the the provisions of the Criminal Tribes Act, 1924, which is an existing Indian law relating to entry 23 in the Concurrent Legislative List, it will be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

2. The Bill does not require any sanction under the Government of India Act, 1935, but would require the recommendation of the Governor under section 82(3) of the said Act. The papers should therefore be submitted to the Governor for obtaining his recommendation. The requisite draft order under section 82(3) of the Government of India Act, 1935, in this behalf is sent herewith.

3. The draft of notice to be given to the Secretary to the Bombay Legislative Department is also sent herewith.

4. H.D. will no doubt consider the question of applying the Act to the partially excluded areas in the Province.

Sd/- P.H.Lad.
Secretariat of Legal Affairs.

U.S. to H.D. (Through P.A. to H.M. (H & R) No. 30-L,
dated the 17th September 1947.

SHT/11.9.

No. 11055

Legal Department,

Bombay Castle, 20th November 1947.

From

P.H. Lad, Esquire, I. C. S.,
Secretary to the Government of Bombay;

To

The Private Secretary to Governor of Bombay.

Subject:- A Bill to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them themselves and for placing them in settlements.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor an authentic copy of a Bill to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 7th and 18th October 1947, respectively.

2. The subject-matter of the Bill falls under entries 1, 4 and 37 in List II and entries 2 and 23 in List III in the seventh Schedule to the Government of India Act, 1935.

3. As the provisions of clause 23 of the Bill are repugnant to the provisions of the Criminal Tribes Act, 1924, which is an existing law relating to entry 23 in the Concurrent Legislative List, it will be necessary to reserve the Bill for the consideration of the Governor General with reference to section 107(2) of the Government of India Act, 1935.

4. I am also forward herewith six copies of each of the items Nos. 1 to 3 and two copies of item No.4 of the papers noted in the margin. The Bill was not referred to a Select Committee.

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	
2. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	
3. Bill as read for the third time and passed by the Bombay Legislative Council.	
4. Extracts from the proceedings of the Bo mbay Legislative Assembly dated the 6th and 7th October 1947 and of the Bombay Legislative Council dated the 18th October 1947.	

I have the honour to be,

Sir,

Your most obedient servant,

Sd/- P.N.Lal.
19/4

Secretary to the Government of Bombay,
Legal Department.

Through

The Secretary to the Government of Bombay,
Home Department.

SHR/14.4.

No. P.S.G.- 5508
Office of the Private Secretary to the Governor,
Government House,
Bombay, 24th November 1947.

From

L.E. Baghbie, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislative Department,
Council Hall, Bombay.

Subject: The Bombay Habitual Offenders Restriction Bill, 1947.

Sir,

With reference to the above Bill, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 7th and 18th October 1947, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as the provisions of clause 23 of the Bill are repugnant to the provisions of the Criminal Tribes Act, 1924, which is an existing law relating to entry 23 in the Concurrent Legislative List, it is necessary to reserve the Bill for the consideration of His Excellency the Governor-General with reference to section 107(2) of the Government of India Act, 1935. His Excellency is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of the Governor - General.

Your obedient servant,

L. E. Baghbie,

Private Secretary
to the Governor of Bombay.

No. P.S.G.-5509
Office of the Private Secretary to the Governor,
Bombay, 24th November 1947.

Copy forwarded with compliments to -

(1) The Secretary to Government, Legal Department, with reference to his letter No. 11055, dated 20th November 1947.
(2) The Secretary to Government, Home Department, with reference to his endorsement No. 9849/3-G, dated 21st November 1947.

By order of the Governor of Bombay,

Sd/- L.E.Baghbie.

Private Secretary to the Governor of Bombay.

No.PSG. 5969
Government House,
Bombay, 27th December 1947.

From

S.S.Bagshaw, Esquire., I.C.S.,
Private Secretary to the Governor of
Bombay,

To

The Secretary to Government,
Legal Department.

Subject: The Bombay Habitual Offenders
Restriction Bill, 1947.

Sir,

With reference to the correspondence resting with this Office letter No.PSG. dated the 27th December 1947, I am directed to forward herewith the authentic copy of the Bombay Habitual Offenders Restriction Bill,1947, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-

Private Secretary to the Governor
of Bombay.

SHF/14.4.

BILL.

A Bill to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 17-L
Council Hall, Poona, 19th September 1947.

RESOLUTION:- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Central Press, Bombay, for publication in the Bombay Government Gazette, dated the 14th September 1947, as Bill No.XLVII of 1947.

2. The Bill and the Statement of Objects and Reasons should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette, on the 19th September 1947.

3. The dates of the various publications should be reported to the Bombay Legislature Department.

By order of the Governor of Bombay,

Sd/- G. D. BAKHALE,

Deputy Secretary to Government.

To

The Manager, Government Central Press, Bombay
(with the Bill and S.O.R. and with a request that 230 Gazette copies of the Bill and the S.O.R. may be forwarded to the Bombay Legislature Department for distribution to the Members of the Bombay Legislative Assembly and 45 copies for the use of the Legal Department and 20 copies for the use of the Home Department).

The Home Department,
* The Oriental Translator to Government
The Bombay Legislature Department,
The Director of Publicity, Bombay.
} with a copy of the Bill and S.O.R.

* With five extra copies of the Bill.

SUT /14/4

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XLVII OF 1947.

A Bill to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements.

WHEREAS it is expedient to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements; It is hereby enacted as follows :—

Short title and extent.

1. (*1*) This Act may be called the Bombay Habitual Offenders Restriction Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Code" means the Code of Criminal Procedure, 1898 ; Act V of 1898.

(*2*) "order of restriction" means an order made under this Act requiring a person other than a child as defined in the Bombay Children Act, 1924— Bom. XIII of 1924.

(*a*) to restrict his movements to any area within the Province specified in the order, or

(*b*) to report himself at the times and at the places and in the manner specified in the order, or

(*c*) to do both ;

(*3*) "order of settlement" means an order made under section 15 placing a person in a settlement established under the said section;

(*4*) "prescribed" means prescribed by rules made under this Act;

(*5*) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

Order of restriction against habitual offenders.

3. (*1*) In any case in which a Magistrate may under the provisions of section 110 of the Code require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing require such person to show cause why an order of restriction should not be made against him.

Joint proceedings and record.

(*2*) If the Magistrate in addition to requiring such person to show cause why he should not be ordered to execute a bond for his good behaviour requires him to show cause why an order of restriction should not be made against him, the proceedings in respect of the order of restriction may be taken jointly with the proceedings in respect of security and may be included in and form part of the same record.

Procedure in making order of restriction.

4. Whenever a Magistrate acting under section 3 deems it necessary to require a person to show cause why an order of restriction should not be made against him, he shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour:

Provided that the order in writing referred to in section 112 of the Code shall, in addition to setting forth the substance of the information received, state the term not exceeding three years during which the order of restriction shall be in force although it need not state whether the order of restriction shall be an order requiring him to restrict his movements to any area or requiring him to report himself at any place or requiring him to do both.

Issue of warrant in lieu of or in addition to summons.

5. The provisions of section 90 of the Code shall be applicable in respect of any proceedings under this Act as if they were proceedings under the Code.

Discharge of person informed against.

6. If upon an enquiry made in accordance with the preceding sections, the Magistrate is of opinion that it is not necessary to make an order of restriction against the person in respect of whom the enquiry is made, he shall make an entry to that effect on the record, and if he does not order the execution of a bond for good behaviour he

shall, if such person is in custody for the purposes of such enquiry only, release him or if such person is not in custody, discharge him.

Making of order of restriction.

7. If upon an inquiry as aforesaid, the Magistrate is of opinion that it is necessary to make an order of restriction against the person in respect of whom the inquiry is made, the Magistrate shall make an order accordingly:

Provided that the Magistrate shall not make an order of restriction against any person against whom he makes an order under section 118 of the Code requiring such person to execute a bond for his good behaviour:

Provided further that no order of restriction shall be made for a term exceeding three years or for a term longer than that referred to in the order made under the proviso to section 4.

Restriction order under section 123 (3) of the Code.

8. (*1*) A Court acting under sub-section (*3*) of section 123, or an Appellate Court acting under section 406, of the Code, may in lieu of the order requiring any person to give security under section 110 of the Code make an order of restriction for any period not exceeding that for which the security was required to be given.

Restriction order against convicted offenders.

(*2*) In any case in which a Court or Magistrate is empowered to make an order against any convicted person under section 565 of the Code such Court or Magistrate, may, if it or he thinks fit, at the time of passing sentence on such person and in lieu of making an order as provided in the said section make an order of restriction against such person for a period not exceeding three years from the date of the expiration of such sentence.

(*3*) If such conviction is set aside on appeal or otherwise, the order of restriction shall become void.

(*4*) No order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

Particulars to be specified in restriction order.

9. Every order of restriction made under this Act shall state whether the person against whom the order is made is required to restrict his movements or is required to report himself or is required to do both. The order shall also specify the area and the nature of the restrictions imposed and the places, the times, and the manner of report, as the case may be. The order shall also contain such other particulars as may be prescribed.

Residence or means of livelihood within area of restriction.

10. (*1*) No order shall be made restricting the movements of any person to any particular area unless the Court or Magistrate making the order is satisfied that

such person has adequate means of earning his livelihood within such area or ordinarily resides in such area.

(2) Before making an order restricting the movements of any person to any area, the Court or Magistrate shall record and consider any objection which such person may urge in regard to the area to which his movements are proposed to be restricted.

Power to cancel or modify order of restriction

11. (1) Where under an order of restriction made against him any person's movements have been restricted to any area, if the said area is Greater Bombay or a part thereof the Chief Presidency Magistrate, or if the said area is a district or part of a district the District Magistrate, may at any time, on his own motion or on an application of such person and for sufficient reasons to be recorded in writing, make an order cancelling or modifying the order of restriction.

(2) Such order of modification may provide—

(a) that the said person shall report himself at the times and at the places and in the manner specified in the order; or

(b) that he shall restrict his movements either to the area in which he ordinarily resides or to any other area in which the Magistrate is satisfied he has reasonable prospects of earning his livelihood.

(3) The Provincial Government may authorise any Presidency Magistrate or any Sub-Divisional Magistrate to make the order of modification referred to in sub-section (2) in respect of a person within his jurisdiction.

Power to substitute restriction order for bond for good behaviour or for order for notifying address.

12. Where an order requiring security for good behaviour has been made against any person under the Code or an order has been made against any person under section 565 of the Code, whether before or after the coming into operation of this Act, the Chief Presidency Magistrate in Greater Bombay and elsewhere the District Magistrate may, at any time, before the period of security or the term of the order under section 565, as the case may be, has expired make in lieu thereof an order of restriction:

Provided that—

(1) the period of the order of restriction shall not exceed the unexpired portion of the period of security or the term of the order under section 565; and

(2) no order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

13. An appeal shall lie against an order of restriction— Appeals.

(*i*) to the District Magistrate if such order has been made by a Magistrate subordinate to him;

(*ii*) to the Court of Session if such order has been made by a District Magistrate;

(*iii*) to the High Court in any other case.

14. Subject to the provisions of section 13, the provisions of the Code shall apply to appeals under this Act. Code to apply to appeals.

15. (*1*) For the purposes of this Act, the Provincial Government may establish industrial, agricultural or reformatory settlements. Power to establish settlements and place habitual offenders therein.

(*2*) The Provincial Government or any officer authorised by the Provincial Government in this behalf may in lieu of an order of restriction made against any person under this Act make an order directing such person to be placed in a settlement established under sub-section (*1*) for a period not exceeding the period for which the order of restriction has been made.

(*3*) The Provincial Government or the officer authorised under sub-section (*2*) may at any time, by general or special order, direct any person who may be in any settlement,

(*a*) to be discharged, or

(*b*) to be transferred to some other settlement.

16. (*1*) Whoever being a person against whom an order of restriction or an order of settlement has been made— Arrest of person contravening order of restriction or of settlement.

(*a*) is found beyond the limits of the settlement or the area to which his movements have been restricted, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or

(*b*) escapes from a settlement, may be arrested without warrant by any police-officer or a police-patel, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or to such settlement, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(*2*) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section:

Provided that an order from the Provincial Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

17. (*1*) Every police-patel of a village in which any person against whom an order of restriction or order of settlement has been made, and every owner or occupier of land on which any such person resides, and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the departure of any person from such village or from such land, as the case may be. Duties of police-patel and owners or occupiers of land to give information in certain cases.

(2) Every police-patel of a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any person against whom an order of restriction or order of settlement is reasonably suspected of having been made.

Penalties for breach of rules.

18. (1) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes a rule made under clauses (*i*), (*ii*), (*iii*) and (*iv*) of sub-section (2) of section 22 shall, on conviction, be punishable with imprisonment for a term which may extend,—

(*a*) on a first conviction, to one year,

(*b*) on a second conviction, to two years, and

(*c*) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes any other rule made under section 22 shall be punishable—

(*a*) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; and

(*b*) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(3) In computing the period for which an order of restriction or of settlement shall remain in force, any period of imprisonment undergone in execution of a sentence passed under sub-section (1) or (2) shall be excluded.

(4) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code may be arrested without a warrant by any officer-in-charge of a police-station or by any police-officer not below the rank of a Sub-Inspector.

Enhanced punishment for certain offences by persons against whom order of restriction or order of settlement has been made after previous conviction.

19. (1) Whoever, being a person against whom an order of restriction or an order of settlement has been made and having been convicted of any of the offences under the Indian Penal Code specified in the Schedule, is convicted of the same or of any other offence specified in the Schedule, shall, on conviction, be punishable with transportation for life or with imprisonment of either description for a term which may extend to ten years. XLV of 1860.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law. XLV of 1860.

Punishment for persons against whom restriction order or settlement order has been made, found under suspicious circumstances.

20. Whoever, being a person against whom an order of restriction or an order of settlement has been made, is found in any place under such circumstances as to satisfy the Court,—

(*a*) that he was about to commit, or aid in the commission of, theft or robbery, or

(*b*) that he was making preparation for committing theft or robbery,

shall, on conviction, be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

Penalty for breach of duties by police-patel, owners or occupiers of land or their agents.

21. Any police-patel, owner or occupier of land, or the agent of any such owner or occupier, who fails to comply with the requirements of section 17, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

XLV of 1860.

Rules.

22. (*1*) The Provincial Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(*i*) the areas to which the movements of any person may be restricted and the nature of the restrictions to be observed by such persons;

(*ii*) the times and places at which and the manner in which such persons shall report themselves;

(*iii*) the conditions as to holding passes under which such persons may be permitted to leave the area to which their movements have been restricted or the settlement in which they have been settled;

(*iv*) the conditions to be inserted in any such pass in regard to—

(*a*) the place to which the holder of the pass may or may not go;

(*b*) the persons before whom from time to time he shall be bound to present himself;

(*c*) the period during which he may be absent;

(*v*) any other particulars deemed necessary to be included in an order of restriction;

(*vi*) the circumstances in which persons against whom an order of restriction or an order of settlement has been made shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;

(*vii*) the management, control and supervision of industrial, agricultural or reformatory settlements;

(*viii*) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour;

(*ix*) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or otherwise offending against the rules for the time being in force, shall be subject and the periodical visitation of such settlement.

Criminal Tribes Act to cease to extend to Province of Bombay.

23. The Criminal Tribes Act, 1924, shall cease to extend to the Province of Bombay with effect from such date not being later than 2 years from the date of the coming into operation of this Act as may be notified in that behalf by the Provincial Government in the *Official Gazette*. VI of 1924.

Savings.

24. Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force to make an order of restriction or detention and any order of restriction or of settlement passed under this Act in so far as it may conflict with any order made by a competent authority under such law shall be deemed to be inoperative while the order under such law remains in force.

SCHEDULE.

(*See* section 19.)

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460	All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

STATEMENT OF OBJECTS AND REASONS.

The existing law relating to habitual offenders has been found to be inadequate. In the Punjab there is at present in force the Restriction of Habitual Offenders (Punjab) Act which was passed in 1918 with a view to control the movements of bad characters. This legislation has been found to be of great value in that Province in dealing with this type of criminal. It is proposed to enact local legislation on the lines of the Punjab Act with additional provisions for settlements on the lines of settlements established under the Criminal Tribes Act. The Bill is intended to carry out this object.

(Signed) MORARJI DESAI.

Dated 13th September 1947.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

Poona, dated the 13th September 1947.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Acts.

Publication of the Bombay Habitual Offenders Restriction Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 13569

Bombay Castle, 31st December 1947.

Letter to the Private Secretary to the Governor, No. 11065, dated the 30th December 1947.

Letter from the Private Secretary to the Governor, No. P. S. G.5963, dated the 27th December 1947 :-

"With reference to the correspondence resting with this Office letter No.1C6 , dated the 27th December 1947, I am directed to forward herewith the authentic copy of the Bombay Habitual Offenders Restriction Bill, 1947, with His Excellency the Governor-General's assent signified thereon".

RESOLVED.- The law should be published as Bombay Act No. LI of 1947, in the Bombay Government Gazette dated the 31st December 1947.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devanagari scripts) and these translations should be pu -lished in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Home Department.

By order of the Governor of Bombay,

Cd/- G.D.Palekar.
Deputy Secretary to Government

To

The Manager, Government Central Press, Bombay (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department),
The Home Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity, Bombay.
The Enquiry Officer for the Secretariat, Bombay.

} With a copy of the Act.

* With five extra copies of the Act.

cSM/14.4.

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BOMBAY ACT No. LI OF 1947.

~~L. A. BILL No. XLVII OF 1947.~~

An Act

~~A Bill~~ to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements.

(As read for the third time and passed by the Legislative Assembly on the 7th October 1947.)

(As read for the third time and passed by the Legislative Council on the 18th October 1947.)

WHEREAS it is expedient to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bombay Habitual Offenders Restriction Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

V of 1898.

(*1*) "Code" means the Code of Criminal Procedure, 1898;

Bom. XIII of 1924.

(*2*) "order of restriction" means an order made under this Act requiring a person other than a child as defined in the Bombay Children Act, 1924—

(*a*) to restrict his movements to any area within the Province specified in the order, or

(*b*) to report himself at the times and at the places and in the manner specified in the order, or

(*c*) to do both;

MG-I Bk Hb 233—1

(3) "order of settlement" means an order made under section 15 placing a person in a settlement established under the said section ;

(4) "prescribed" means prescribed by rules made under this Act ;

(5) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

Order of restriction against habitual offenders.

3. (1) In any case in which a Magistrate may under the provisions of section 110 of the Code require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing require such person to show cause why an order of restriction should not be made against him.

Joint proceedings and record.

(2) If the Magistrate in addition to requiring such person to show cause why he should not be ordered to execute a bond for his good behaviour requires him to show cause why an order of restriction should not be made against him, the proceedings in respect of the order of restriction may be taken jointly with the proceedings in respect of security and may be included in and form part of the same record.

Procedure in making order of restriction.

4. Whenever a Magistrate acting under section 3 deems it necessary to require a person to show cause why an order of restriction should not be made against him, he shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour :

Provided that the order in writing referred to in section 112 of the Code shall, in addition to setting forth the substance of the information received, state the term not exceeding three years during which the order of restriction shall be in force although it need not state whether the order of restriction shall be an order requiring him to restrict his movements to any area or requiring him to report himself at any place or requiring him to do both.

Issue of warrant in lieu of or in addition to summons.

5. The provisions of section 90 of the Code shall be applicable in respect of any proceedings under this Act as if they were proceedings under the Code.

Discharge of person informed against.

6. If upon an enquiry made in accordance with the preceding sections, the Magistrate is of opinion that it is not necessary to make an order of restriction against the person in respect of whom the enquiry is made, he shall make an entry to that effect on the record, and if he does not order the execution of a bond for good behaviour he

shall, if such person is in custody for the purposes of such enquiry only, release him or if such person is not in custody, discharge him.

Making of order of restriction.

7. If upon an inquiry as aforesaid, the Magistrate is of opinion that it is necessary to make an order of restriction against the person in respect of whom the inquiry is made, the Magistrate shall make an order accordingly:

Provided that the Magistrate shall not make an order of restriction against any person against whom he makes an order under section 118 of the Code requiring such person to execute a bond for his good behaviour:

Provided further that no order of restriction shall be made for a term exceeding three years or for a term longer than that specified in the order referred to in the proviso to section 4.

Restriction order under section 123 (3) of the Code.

8. (*1*) A Court acting under sub-section (*3*) of section 123, or an Appellate Court acting under section 406, of the Code, may in lieu of the order requiring any person to give security under section 110 of the Code make an order of restriction for any period not exceeding that for which the security was required to be given.

Restriction order against convicted offenders.

(*2*) In any case in which a Court or Magistrate is empowered to make an order against any convicted person under section 565 of the Code such Court or Magistrate, may, if it or he thinks fit, at the time of passing sentence on such person and in lieu of making an order as provided in the said section make an order of restriction against such person for a period not exceeding three years from the date of the expiration of such sentence.

(*3*) If such conviction is set aside on appeal or otherwise, the order of restriction shall become void.

(*4*) No order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

Particulars to be specified in restriction order.

9. Every order of restriction made under this Act shall state whether the person against whom the order is made is required to restrict his movements or is required to report himself or is required to do both. The order shall also specify the area and the nature of the restrictions imposed and the places, the times, and the manner of report, as the case may be. The order shall also contain such other particulars as may be prescribed.

Residence or means of livelihood within area of restriction.

10. (*1*) No order shall be made restricting the movements of any person to any particular area unless the Court or Magistrate making the order is satisfied that

such person has adequate means of earning his livelihood within such area or ordinarily resides in such area.

(2) Before making an order restricting the movements of any person to any area, the Court or Magistrate shall record and consider any objection which such person may urge in regard to the area to which his movements are proposed to be restricted.

Power to cancel or modify order of restriction

11. (1) Where under an order of restriction made against him any person's movements have been restricted to any area, if the said area is Greater Bombay or a part thereof the Chief Presidency Magistrate, or if the said area is a district or part of a district the District Magistrate, may at any time, on his own motion or on an application of such person and for sufficient reasons to be recorded in writing, make an order cancelling or modifying the order of restriction.

(2) Such order of modification may provide—

(a) that the said person shall report himself at the times and at the places and in the manner specified in the order; or

(b) that he shall restrict his movements either to the area in which he ordinarily resides or to any other area in which the Magistrate is satisfied he has reasonable prospects of earning his livelihood.

(3) The Provincial Government may authorise any Presidency Magistrate or any Sub-Divisional Magistrate to make the order of modification referred to in sub-section (2) in respect of a person within his jurisdiction.

Power to substitute restriction order for bond for good behaviour or for order for notifying address.

12. Where an order requiring security for good behaviour has been made against any person under the Code or an order has been made against any person under section 565 of the Code, whether before or after the coming into operation of this Act, the Chief Presidency Magistrate in Greater Bombay and elsewhere the District Magistrate may, at any time, before the period of security or the term of the order under section 565, as the case may be, has expired make in lieu thereof an order of restriction:

Provided that—

(1) the period of the order of restriction shall not exceed the unexpired portion of the period of security or the term of the order under section 565; and

(2) no order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

Appeals.

13. An appeal shall lie against an order of restriction—

(*i*) to the District Magistrate if such order has been made by a Magistrate subordinate to him;

(*ii*) to the Court of Session if such order has been made by a District Magistrate;

(*iii*) to the High Court in any other case.

Code to apply to appeals.

14. Subject to the provisions of section 13, the provisions of the Code shall apply to appeals under this Act.

Power to establish settlements and place habitual offenders therein.

15. (*1*) For the purposes of this Act, the Provincial Government may establish industrial, agricultural or reformatory settlements.

(*2*) The Provincial Government or any officer authorised by the Provincial Government in this behalf may in lieu of an order of restriction made against any person under this Act make an order directing such person to be placed in a settlement established under sub-section (*1*) for a period not exceeding the period for which the order of restriction has been made.

(*3*) The Provincial Government or the officer authorised under sub-section (*2*) may at any time, by general or special order, direct any person who may be in any settlement,

(*a*) to be discharged, or

(*b*) to be transferred to some other settlement.

Arrest of person contravening order of restriction or of settlement.

16. (*1*) Whoever being a person against whom an order of restriction or an order of settlement has been made—

(*a*) is found beyond the limits of the settlement or the area to which his movements have been restricted, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or

(*b*) escapes from a settlement, may be arrested without warrant by any police-officer or a police-patel, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or to such settlement, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(*2*) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section:

Provided that an order from the Provincial Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of police-patel and owners or occupiers of land to give information in certain cases.

17. (*1*) Every police-patel of a village in which any person against whom an order of restriction or order of settlement has been made, and every owner or occupier of land on which any such person resides, and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the departure of any person from such village or from such land, as the case may be.

(2) Every police-patel of a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any person against whom an order of restriction or order of settlement is reasonably suspected of having been made.

Penalties for breach of rules.

18. (1) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes a rule made under clauses (*i*), (*ii*), (*iii*) and (*iv*) of sub-section (2) of section 22 shall, on conviction, be punishable with imprisonment for a term which may extend,—

(*a*) on a first conviction, to one year,

(*b*) on a second conviction, to two years, and

(*c*) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both.

(2) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes any other rule made under section 22 shall be punishable—

(*a*) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; and

(*b*) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(3) In computing the period for which an order of restriction or of settlement shall remain in force, any period of imprisonment undergone in execution of a sentence passed under sub-section (1) or (2) shall be excluded.

(4) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code may be arrested without a warrant by any officer-in-charge of a police-station or by any police-officer not below the rank of a Sub-Inspector.

Enhanced punishment for certain offences by persons against whom order of restriction or order of settlement has been made after previous conviction.

19. (1) Whoever, being a person against whom an order of restriction or an order of settlement has been made and having been convicted of any of the offences under the Indian Penal Code specified in the Schedule, is convicted of the same or of any other offence specified in the Schedule, shall, on conviction, be punishable with transportation for life or with imprisonment of either description for a term which may extend to ten years.

XL. of 1860.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

XLV of 1860.

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Punishment for persons against whom restriction order or settlement order has been made, found under suspicious circumstances.

20. Whoever, being a person against whom an order of estriction or an order of settlement has been made, is found n any place under such circumstances as to satisfy the Court,—

(*a*) that he was about to commit, or aid in the commission of, theft or robbery, or

(*b*) that he was making preparation for committing theft or robbery,

shall, on conviction, be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

Penalty for breach of duties by police-patel, owners or occupiers of land or their agents.

21. Any police-patel, owner or occupier of land, or the agent of any such owner or occupier, who fails to comply with the requirements of section 17, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

XLV of 1860.

Rules.

22. (*1*) The Provincial Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(*i*) the areas to which the movements of any person may be restricted and the nature of the restrictions to be observed by such persons;

(*ii*) the times and places at which and the manner in which such persons shall report themselves;

(*iii*) the conditions as to holding passes under which such persons may be permitted to leave the area to which their movements have been restricted or the settlement in which they have been settled;

(*iv*) the conditions to be inserted in any such pass in regard to—

(*a*) the place to which the holder of the pass may or may not go;

(*b*) the persons before whom from time to time he shall be bound to present himself;

(*c*) the period during which he may be absent;

(*v*) any other particulars deemed necessary to be included in an order of restriction;

(*vi*) the circumstances in which persons against whom an order of restriction or an order of settlement has been made shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;

(*vii*) the management, control and supervision of industrial, agricultural or reformatory settlements;

(*viii*) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour ;

(*ix*) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or otherwise offending against the rules for the time being in force, shall be subject and the periodical visitation of such settlement.

Criminal Tribes Act to cease to extend to Province of Bombay.

23. The Criminal Tribes Act, 1924, shall cease to extend to the Province of Bombay with effect from such date not being later than 2 years from the date of the coming into operation of this Act as may be notified in that behalf by the Provincial Government in the *Official Gazette*. VI of 1924.

Savings.

24. Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force to make an order of restriction or detention and any order of restriction or of settlement passed under this Act in so far as it may conflict with any order made by a competent authority under such law shall be deemed to be inoperative while the order under such law remains in force.

SCHEDULE.

(*See* section 19.)

CHAPTER XII.

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232	Counterfeiting Queen's coin.
233	Making or selling instrument for counterfeiting coin.
234	Making or selling instrument for counterfeiting Queen's coin.
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240	Delivery of Queen's coin, possessed with knowledge that it is counterfeit.
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243	Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

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325 Voluntarily causing grievous hurt.

326 Voluntarily causing grievous hurt by dangerous weapons or means.

327 Voluntarily causing hurt to extort property, or to constrain to an illegal act.

328 Causing hurt by means of poison, etc., with intent to commit an offence.

329 Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.

332 Voluntarily causing hurt to deter public servant from his duty.

333 Voluntarily causing grievous hurt to deter public servant from his duty.

369 Kidnapping or abducting child under ten years with intent to steal from its person.

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392 Robbery.

393 Attempt to commit robbery.

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397 Robbery or dacoity, with attempt to cause death or grievous hurt.

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460	All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt is caused by one of them.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XLVII OF 1947.]

(As read for the third time and passed by the Legislative Assembly on the 7th October 19

(As read for the third time and pa by the Legislative Council on the 18th October 1947.)

A Bill to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements.

[Mr. Morarji Desai, M.L.A.]

BOMBAY: PRINTED AT THE GOVERNMENT CENTRAL PRESS.